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Feminist Strategy in International Law: Understanding its Legal, Normative and Political Dimensions

Catherine O'Rourke^{*}

Abstract

While international law has typically waxed and waned in feminist favours, contemporary feminist engagements reveal a strongly critical, reflective thrust about the costs of engaging international law and the quality of ostensible gains. To inform this reflection, the article draws on feminist scholarship in international law – and a specific feminist campaign for the implementation of United Nations Security Council Resolution 1325 (2000) on Women, Peace and Security in Northern Ireland – to distill three distinct feminist understandings of international law that underpin both theory and advocacy. Firstly, international law is understood as a system of rules to which states are bound; secondly, as an avenue for the articulation of shared feminist values; and thirdly, as a political tool to advance feminist demands. The study finds that feminist doctrinalists, and those working within the institutions of international law, share concerns about the resolution's legal deficiencies and the broader place of the Security Council within international lawmaking. These concerns are, however, largely remote for local feminist activists, who recognized in the resolution important political resources to support their mobilization, their alliances with others and ultimately, it is hoped, their engagement with state actors. The article concludes that critical reflection on feminist strategy in international law is usefully informed by more deliberate consideration of its legal,

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political and normative dimensions, as well as an awareness that these dimensions will be differently weighted by differently situated feminist actors.

1. Introduction

These are difficult times for feminist internationalists. International law-making is proliferating in respect of women's human rights,¹ women's participation rights,² and in ending impunity for particular forms of gender-based violence.³ Yet, contemporary developments suggest not only ongoing work in the generation of international law norms,⁴ but also concerted activity to reflect on and evaluate the efficacy of these international legal developments. Findings from the UN's recent Global Study on Security Council Resolution 1325 (2000)⁵ (hereafter Resolution 1325) will likely feed into broader concerns about the efficacy of feminist strategy in international law (what Bell has called 'the era of disillusionment').⁶ While international law has typically waxed and waned in feminist favours, contemporary feminist engagements reveal a strongly

¹ United Nations Committee on the Elimination of Discrimination Against Women, 'General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations', CEDAW/C/GC/30 (2014).

² SC Res. 1325 (2000); SC Res. 2122 (2014).

³ International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, 11 June 2014, available at <https://www.gov.uk/government/publications/international-protocol-on-the-documentation-and-investigation-of-sexual-violence-in-conflict> (last visited 31 August 2016).

⁴ For example, SC Res. 2144 (2015).

⁵ UN Women, 'Preventing Conflict, Transforming Justice, Securing the Peace: A Global Study on the Implementation of United Nations Security Council Resolution 1325', 9 October 2015.

⁶ Bell, 'What We Talk About When We Talk About Political Settlements: Towards Inclusive and Open Political Settlements in an Era of Disillusionment', 1 *Political Settlements Working Papers* 1, at 9.

critical, reflective thrust about the costs of engaging international law and the quality of ostensible gains.⁷

The article sets out to make two distinct contributions to contemporary critical feminist reflection about feminist strategy in international law. Firstly, the article offers a novel heuristic device, that distinguishes between international law as a system of rules to which states are bound, as an avenue for the articulation of shared feminist values, and as a political tool to advance feminist demands. Much evaluation of international law for gender equality focuses, for example, on treaty ratification, the extent of state compliance or non-compliance with relevant instruments,⁸ and the quality of implementation by intergovernmental organizations.⁹ Evidence points to energy by women's organizations in local and transnational settings,¹⁰ and to feminists within international institutions,¹¹ continuing to work proactively for the development and enforcement of such norms. Nevertheless, it is clear that the pursuit of legal obligation and state compliance is but one important motivation for feminist engagement. The article seeks to elucidate these other normative and political considerations.

Secondly, the article contributes new empirical data from research conducted across local, transnational and 'insider' levels of feminist engagement with international

⁷ See, for example, Otto, 'The Exile of Inclusion: Reflections on Gender Issues in International Law over the Last Decade,' 10 *Melbourne Journal of International Law* (2009) 11.

⁸ Charlesworth, 'Transforming the United Men's Club: Feminist Futures for the United Nations' 421 *Transnational Law and Contemporary Problems* (1994) 421.

⁹ Charlesworth and M. Woods, 'Mainstreaming Gender' in International Peace and Security: The Case of East Timor' 26 *Yale Journal of International Law* (2001) 313.

¹⁰ J.M. Joachim, *Agenda Setting, the UN, and NGOs: Gender Violence and Reproductive Rights* (2007).

¹¹ S. Sharat, *Gender, Shame and Sexual Violence: The Voices of Witnesses and Court Members at War Crimes Tribunals* (2011).

law,¹² in order to provide insights on feminist strategy from activists. Critical scholarly reflection focused on the activities of the UN system and state parties may overlook what these international law norms for gender equality mean to the feminist activists who engage them. As Hilary Charlesworth argues, in her reflection on feminist scholarship in international law, ‘the challenge is to define practical and responsive methods to support feminist political projects’.¹³ Likewise, as the Global Study on Resolution 1325 cautions: ‘The great changes we are undergoing must primarily be understood in the context of the needs and concerns of women in specific situations of conflict. The “local” must clearly be the most important factor in our analysis.’¹⁴ Through a situated focus on multi-level feminist advocacy for the implementation of the Resolution 1325 in Northern Ireland, the study draws on insights from local feminist advocacy, transnational feminist organizations and from feminists within the institutions of international law.

The article begins by addressing some immediate definitional issues, addressing in turn the understanding of ‘strategy’, ‘feminist’, and ‘international law’ that underpin the article, and introduces the article’s case study of multi-level feminist advocacy for the implementation of Resolution 1325 in Northern Ireland (Part Two). Part 3 draws on feminist scholarship and advocacy to identify the key legal doctrinal challenges posed by international law to achieving feminist objectives, and responses to those challenges. Part 4 identifies the unique potential, and risks, of international law as a vehicle for the articulation of shared feminist values. Part 5 considers the particular opportunities and risks posed by international law as a political tool to advance feminist demands. Significantly, the article finds, feminist doctrinalists, and those working within the institutions of international law, share concerns about the resolution’s legal deficiencies and the broader place of the Security Council within international lawmaking. These

¹² These levels of advocacy are defined and explained further *infra* notes 37-38 and accompanying text.

¹³ Charlesworth, 'Talking to Ourselves? Feminist Scholarship in International Law' in S. Kouvo and Z. Pearson (eds), *Feminist Perspectives on Contemporary International Law* (2011) at 32.

¹⁴ UN Women, *supra* note 5, at 17.

concerns appear, however, largely remote and distant for local feminist activists and non-legal scholars, who recognize in the resolution important political resources to support feminist mobilization, alliances with others and in their engagement with certain state actors. Thus, the article concludes, critical scholarly reflection on feminist strategy in international law is usefully informed by more deliberate consideration of its legal, political and normative dimensions, as well as an awareness that these dimensions will be differently weighted by differently-situated feminist actors.

2. Feminist Strategy in International Law: Initial Definitions

A. ‘Strategy’

The felt urgency of action, and indeed the crisis tendency of international law,¹⁵ means that many feminist engagements might only infrequently be regarded as a matter of pre-determined ‘strategy’. More commonly, they manifest as reactive matters of necessity. According to Mintzberg’s influential conceptual treatment of ‘strategy’, two essential elements are involved, namely ‘[strategies] are made in advance of the actions to which they apply, and they are developed consciously and purposefully’.¹⁶ Dissonance between this definition and the diverse, disaggregated, and often crisis-led, nature of feminist engagements with international law is clear. Nevertheless, longer-term campaigns for, for example, the adoption of new international treaties or soft law documents,¹⁷ suggest time and space and energy for reflection, assessment, calculation and deliberate strategizing. Even more overtly reactive measures, such as urgent statements requesting international

¹⁵ Charlesworth, ‘International Law: A Discipline of Crisis’ 65 *Modern Law Review* (2002) 377.

¹⁶ Mintzberg, ‘The Strategy Concept’ 30 *California Management Review* (1987) 11.

¹⁷ For example, the pursuit of individual complaints mechanism for the International Covenant on Economic, Social and Cultural Rights, see further de Albuquerque, ‘Chronicle of an Announced Birth: The Coming into Life of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights—the Missing Piece of the International Bill of Human Rights’ 32 *Human Rights Quarterly* (2010) 144.

action to respond to crisis,¹⁸ point to ‘strategy as pattern’.¹⁹ This is a definition of strategy, not just as plan, but that captures resulting behavior: ‘strategy is consistency in behavior, whether or not intended’.²⁰ Consistency in feminist engagement underpins the claim to the existence of a broad feminist strategy in international law, even if that strategy goes largely unarticulated.

B. International Law

Given the broad scope of public international law, some specificity of regime is appropriate for this discussion. Questions of feminist strategy in international law have arguably reached their nadir with Resolution 1325 on Women, Peace and Security (WPS). More than any other feminist-informed development in international law, the resolution has prompted the most vocal and critical concerns about the cooption of the women’s movement and the de-radicalization of feminist engagement with international law, with little material gain secured from this engagement.

The prominence of the resolution within critical reflections on feminist strategy can be attributed to six linked grounds, which are elaborated more fully in the remainder of the article. Firstly, the resolution emerges from the UN Security Council, typically the institution that is regarded as the most militarist and nakedly driven by global power politics of all UN institutions. Secondly, the resolution focuses on the participation of women as a panacea in international peace and security, with insufficient focus on the transformation of existing modes of international peace- and security-making²¹ (the absence of any reference to disarmament in the resolution is identified as the classic representation of the resolution’s failure to challenge militarism). Thirdly, the

¹⁸ For example, the letter from a Coalition of 71 Congolese NGOs, Representing the Women of the Democratic Republic of the Congo, to the UN Security Council, Congolese Women Appeal to the UN Security Council to End Sexual Violence, 12 June 2008.

¹⁹ Mintzberg, *supra* note 16.

²⁰ *Ibid.*

²¹ See, for example, C. Cockburn, *From Where We Stand: War, Women’s Activism and Feminist Analysis* (2007).

resolution's shadowy legal status, given that it was not adopted under Chapter VII of the UN Charter, linked to, fourthly, the weak enforcement mechanisms attached to the resolution. Fifthly, the displacement of gender equality claims from the system of state ratification and systematic treaty monitoring undertaken by the Committee on the Elimination of All Forms of Discrimination Against Women.²² And finally, the vulnerability of the resolution to the significant narrowing of the WPS agenda in subsequent resolutions to an almost exclusive focus on conflict-related sexual violence.²³ While many of these identified feminist concerns are not unique to Resolution 1325, they are most pronounced in respect of Resolution 1325.

C. 'Feminist'

The designation 'feminist' involves inherent diversity. Even feminists unified by engagement with international law will differ along other important political and theoretical axes. Arguably, the focus on feminists who engage international law pre-determines a particular type of 'liberal' or 'reformist' feminism,²⁴ though there is little empirical evidence to suggest that this is the case. Contemporary feminist scholarship or engagement with international law seldom frames disagreement as a matter of feminist ideology. Indeed, in feminist theorizing more broadly, we have largely witnessed the decline of old certainties and divisions between feminist schools of Marxism/socialism, liberalism and radicalism.²⁵ In practice, identifying feminist engagement with

²² Convention on the Elimination of All Forms of Discrimination Against Women, adopted and opened for signature by General Assembly resolution 34/180 of 18 December 1979, 1249 UNTS 1, Article 17.

²³ See especially Otto, *supra* note 7.

²⁴ R. Jahan, *The Elusive Agenda: Mainstreaming Women in Development* (1995).

²⁵ See, for example, M. Zalewski, *Feminism After Postmodernism? Theorising through Practice* (2003), quoting Gatens (1992) at 120: 'Over the last two decades, the diversification of feminist theories has rendered the rather convenient tripartite division into Marxist [socialist] feminism, liberal feminism and radical feminism virtually useless'.

international law is less problematic empirically than theoretically and an approach that combines inductive and deductive methods is appropriate.²⁶

To illustrate, feminist advocacy for the implementation of the Resolution 1325 in Northern Ireland has involved local feminist mobilization to make international law matter on the ground in states.²⁷ Such advocacy has emerged both from large organizations operating across the jurisdiction, such as the Women's Resource and Development Agency, and smaller more localized organizations, such as the North Belfast Women's Forum and the Rural Women's Network.²⁸ In addition, support for campaigns within Northern Ireland has been leveraged from feminists working at the transnational level, such as the Women's International League for Peace and Freedom (WILPF) and the London-based network of international women's NGOs, Gender Action on Peace and Security (GAPS).²⁹ Finally, insider advocacy by feminists working within the institutions of international law, has also taken place in the pursuit of Resolution 1325 implementation in Northern Ireland, most notably by the CEDAW Committee.

Across levels of local, transnational and insider activism, therefore, we see a broad strategy of engagement with international law that can be identified as feminist, although there is considerable difference of emphasis across this engagement. In particular, as the article elucidates, while insider feminists give extensive attention to the legal status of international gender equality norms, local feminist activists consider such

²⁶ See, for example, Chinkin, 'Feminist Interventions into International Law' 19 *Adelaide Law Review* (1997) 13, which maps key feminist interventions without offering a definition. See also N. Reilly, *Women's Human Rights* (2008).

²⁷ S.E. Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (2006).

²⁸ See, for example, Women's Resource and Development Agency, 'Women and Peace Building', available at <http://www.wrda.net/Women-and-Peace-Building.aspx> (last visited 1 September 2016).

²⁹ Gender Action for Peace and Security, available at <http://gaps-uk.org/> (last accessed 1 September 2016).

norms almost entirely in terms of their efficacy in supporting feminist mobilization, underpinning local alliances and (potentially) influencing local policy actors.

D. Situating Feminist Strategy in International Law: The Case of Northern Ireland

Northern Ireland offers a salutary case study about ‘the long grass’ of peacemaking for women.³⁰ Whereas the peace talks were marked by a degree of relative openness,³¹ subsequent years of crisis-led political developments in the implementation of the 1998 Belfast/Good Friday Agreement signaled a significant narrowing of the political space afforded to women and to civil society more broadly. Numbers of women in the Legislative Assembly established by the Agreement remain low, at less than 20%. The number of women in public appointments has actually fallen since the Agreement was signed.³² Beyond the descriptive representation of women, substantive gender issues such as childcare and the rights of sexual minorities have received scant political priority.³³ There is significant evidence of a ‘rollback’ on human rights protections in the jurisdiction,³⁴ and women’s security more broadly. In particular, local community-based consultation with women and women’s groups tells a consistent story of political

³⁰ Rooney and Swaine, ‘The Long Grass of Agreements: Promise, Theory and Practice’ 12 *International Criminal Law Review* (2012) 519.

³¹ See, for example, K. Fearon, *Women's Work: The Story of the Women's Coalition* (1999); Christine Bell, ‘Women and the Problems of Peace Agreements: Strategies for Change’ in Radhika Coomaraswamy and Dilrukshi Fonseka (eds), *Peace Work: Women, Armed Conflict and Negotiation* (Peace Work: Women, Armed Conflict and Negotiation, Women Unlimited 2005).

³² Assembly and Executive Review Committee, *Report on Women in Politics and the Northern Ireland Assembly* (2015).

³³ See generally Northern Ireland Women's European Platform, *Shadow Report submitted for the Examination of the Government of Great Britain and Northern Ireland at the 55th Session of the Committee on the Elimination of Discrimination Against Women* (2013)

³⁴ Committee on the Administration of Justice, *Mapping the Rollback: Human Rights Provisions of the Belfast/Good Friday Agreement 15 Years On* (2013).

marginalization, active silencing from residual paramilitary influence, and displacement from paid community development positions.³⁵

What has been fascinating about the response of women's organizations (locally termed 'the women's sector') to this political marginalization is the prominence of Resolution 1325 to these efforts. This advocacy has taken place in the context of persistent resistance from the United Kingdom (UK) to the resolution's application to Northern Ireland, based on long-running unwillingness of the UK government to acknowledge that it was engaged in a conflict within its borders. Indeed, the grander backdrop to contemporary campaigns for application of the resolution to Northern Ireland is the British government's evasion of effective scrutiny of its activities in Northern Ireland by the international legal system.³⁶ An important question then as to the efficacy of the resolution, is the extent to which the Resolution has purchase in the context of the entrenched resistance of a major Western state – one of the Security Council's five permanent members and pen-holder for the WPS resolutions – to its application. This relatively stark case has the potential to elucidate broader theoretical issues about the operation of international law, state and intergovernmental activity, and feminist engagement.

Empirical case study research for the article involved detailed documentary review across relevant feminist publications from local feminist advocacy for domestic implementation of Resolution 1325, transnational feminist advocacy for normative development and enforcement, and insider levels of advocacy.³⁷ The documentary review

³⁵ McWilliams and Kilmurray, 'From the Global to the Local: Grounding UNSCR 1325 on Women, Peace and Security in Post Conflict Policy Making' 51 *Women's Studies International Forum* (2015) 128.

³⁶ See further, Campbell, 'Wars on Terror' and Vicarious Hegemons: The UK, International Law, and the Northern Ireland Conflict' 54 *International and Comparative Law Quarterly* (2005) 321.

³⁷ Relevant scholarship more commonly examines and theorizes 'gender experts', defined as technocrats within the systems of international governance who either bring their gender studies background to technical intergovernmental work, or enhance their

was combined with a small number of interviews (fifteen), conducted evenly across local, transnational and insider levels, to ascertain feminist activist views on advocacy for implementation of the resolution in Northern Ireland.³⁸ Interviews with insider activists have been kept confidential, due to the respondents' continued positions within the international system. These 'insiders' had experience across UN field offices and various

technical expertise by learning gender skills. Feminist 'insiders' is preferred in analysis here because it captures feminist advocacy in the multilateral system beyond technocratic expertise, such as the deliberate movement into key political spaces within the multilateral system in order to advance a feminist agenda. There are multiple country sites and levels, therefore, from which to consider feminist strategy in international law, in particular in the messy business of peacebuilding. Although under-studied and inadequately theorized in the TANs scholarship and, indeed, in broader feminist scholarship in international law, understanding of feminist 'insiders' can be usefully advanced through the (largely Australian) scholarship on 'femocrats', or feminist bureaucrats, see further Sawyer, 'Waltzing Matilda: Gender and Australian Political Institutions' in G. Brennan and F.G. Castles (eds), *Australia Reshaped: 200 Years of Institutional Transformation* (2002). There are reasons to believe that this constituency of feminist 'insiders' in international law is undergoing a growth spurt. Intergovernmental organizations, in particular the UN, evidence growing institutionalization of feminist agendas, such as through the constitution of the UN Women in 2010. Further, there is growing evidence of women, feminists and lawyers with women's rights experience advancing in international courts, such as the appointment of Fatou Bensouda as Chief Prosecutor of the International Criminal Court. See further Prügl, 'Gender expertise as feminist strategy' in G. Caglar and others (eds), *Feminist Strategies in International Governance* (2013).

³⁸ The typology offered here of local, transnational and insider feminist engagement with international law draws on, though departs in significant ways from, the paradigmatic work concerning 'transnational advocacy networks', or TANs, developed by M. E. Keck and K. Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (1998).

UN agencies based in Geneva and New York and across thematic work areas of gender, human rights, development and peacebuilding. All other respondents are named. The author concedes that this is a very modest evidence base and does not seek, therefore, to make overly-broad conclusions. Rather, the key objective is to illustrate broad lines worthy of further inquiry. Moreover, interviewing individuals who are allies, even friends, about advocacy that I had, in particular at the local level, collaborated with them to advance presents obvious issues of researcher effect. These limitations are acknowledged.

3. International Law as Law: The Pursuit of Legal Obligation and State Compliance

There is active debate amongst feminist internationalists about what international law stands for.³⁹ Some read international law principally as a set of rules to which states commit and with which states must comply. At last, it seems, after decades of neglect, there is a clear body of treaty law, jurisprudence, Security Council resolutions and soft law for a principle that women's rights and equality must be protected by states, including in the specific context of armed conflict. It points to a way around the problems of recalcitrant or regressive states. The enforcement of such rules may not, however, be unproblematic. This section draws on feminist scholarship and advocacy to identify the key legal doctrinal challenges posed by international law to achieving feminist objectives, and feminist responses to those challenges.

A. The 'Compliance Paradox' of Soft Law

An initial problem for feminist doctrinalists, or formalists, is that the advancement of the official recognition of women's equality and human rights is disproportionately contained within proliferating soft law documents. Thus, feminist doctrinal critique displays a preoccupation with the sources of international law and the relative basis of gender equality and women's rights norms therein. The areas that lack clarity in the sources of international law are legion and Boyle and Chinkin argue that the International Court of

³⁹ On feminist internationalism and international law, see generally Charlesworth, 'Martha Nussbaum's Feminist Internationalism' 1111 *Ethics* (2000) 64.

Justice statute's articulation of sources⁴⁰ is 'dated and increasingly misleading'.⁴¹ Importantly in terms of feminist engagement, they identify the proliferation of soft law as challenging the clarity of article 38's neat typology of sources. This analysis troublingly locates women's rights and equality under shadowy legal protection.

Soft law instruments can offer some advantages to feminist advocates. They are generally more susceptible to feminist participation in their formulation. Formalists therefore acknowledge the efficacy of soft law as democratizing the making of international law.⁴² Further, it is often easier for drafters to adopt specific and precise terms in non-binding international agreements.⁴³ Soft law instruments can 'produce legal effect', as they influence the interpretation of legally-binding commitments. The interpretative power of soft law is particularly valuable against the backdrop of weak enforcement attached to the CEDAW Convention.⁴⁴ Soft law can provide an entry-way for women into international law-making when formal sites have been so exclusionary.

Soft law clearly also can pose threat to feminists. Formalists are concerned about what Charlesworth has called a 'compliance paradox' that has emerged with the diversification of sites and agents of international law-making. She noted in 1998 that the gender equality norms emerging from international conferences were weak.⁴⁵ Moreover, their greater distance from state consent has a resultant impact on the likelihood of state compliance.⁴⁶ The 'compliance paradox' therefore emerges that, while NGOs (including feminists) have greater involvement in the development of norms, the legal status – and thus compliance pull – of these norms on states is markedly weaker.

⁴⁰ Statute of the International Court of Justice, 33 UNTS 993, Article 38(1).

⁴¹ A. Boyle and C. Chinkin, *The Making of International Law* (2007) at 211.

⁴² See, for example, Charlesworth, 'The Unbearable Lightness of Customary International Law' 92 *American Society of International Law Proceedings* (1998) 44.

⁴³ *Ibid.*, at 192.

⁴⁴ Charlesworth and Chinkin, *The Boundaries of International Law: A Feminist Analysis* (2000) at 104.

⁴⁵ Charlesworth, *supra* note 42.

⁴⁶ *Ibid.*

It seems hard not to conclude, therefore, that the UN Security Council has offered the allure, but not the effect, of robust legal status. It bears reflection that a number of the progressive articulations of gender equality in international law have taken place in the blurred area between binding and non-binding instruments. The desire for clear legally-binding obligations on states was a key motivation for transnational and insider activists moving feminist demands from the international human rights system and UN General Assembly to the UN Security Council.⁴⁷ Yet, while the UN Charter mandates UN member states to ‘accept and carry out’ decisions of the Security Council,⁴⁸ it is resolutions adopted under Chapter VII of the UN Charter (International Peace and Security) that are binding in nature.⁴⁹ Resolution 1325 is a ‘thematic’ and nonbinding resolution best understood as adopted under Chapter VI (Pacific Settlement of Disputes) of the UN Charter.⁵⁰ The resolution’s legal authority has been accentuated by the fact that it was passed unanimously, and that the resolution uses the language of obligation in parts.⁵¹ The question persists, nevertheless, as to the wisdom of investing feminist energies in legal strategies that do not give rise to clearly legally-binding obligations.⁵²

⁴⁷ Cockburn, *supra* note 21, at 132-155

⁴⁸ United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, Article 25 (hereafter UN Charter).

⁴⁹ See, for example, ‘Extending the Mandate of the UN Operation in Iraq: Options’, available at <http://www.gpo.gov/fdsys/pkg/CHRG-110hhr43716/pdf/CHRG-110hhr43716.pdf> (last accessed 1 September 2016).

⁵⁰ See generally Szasz, ‘The Security Council Starts Legislating’ 96 *American Journal of International Law* (2002) 901.

⁵¹ On the status and nature of Resolution 1325, see S. Anderlini, *Women Building Peace: What they do, Why it Matters* (2004) at 196–199; Otto, ‘A Sign of “Weakness”? Disrupting Gender Certainties in the Implementation of Security Council Resolution 1325’ 13 *Michigan Journal of Gender and Law* (2006) 113; Tryggstad, ‘The UN and Implementation of UN Security Council Resolution 1325 on Women, Peace and Security’ 15 *Global Governance* (2009) 539.

⁵² Otto, *supra* note 7.

B. The Fragmentation of International Law and Gender Equality Norms

A second problem for feminist formalists is the mooted fragmentation of gender equality norms under international law. Critical legal scholars encourage legal reform advocates to reflect carefully on just what actors are being empowered by a proposed legal reform.⁵³ The pursuit of the WPS agenda through the UN Security Council generates analogous concerns about the disempowerment of the most democratic and representative UN organ, with specific responsibility for disarmament,⁵⁴ namely the General Assembly. Likewise, it raises questions about disempowering the most effective mechanisms of state accountability for gender equality, namely human rights treaty-monitoring bodies. The systemic implications of a feminist targeting of the UN Security Council for legal progress are writ large here.

The fragmented location of gender equality norms within an increasingly fragmented international legal system should likewise sound a feminist doctrinal alarm bell.⁵⁵ More dispersed gender equality norms are more difficult to enforce, as it is unclear what institution has key responsibility for enforcement.⁵⁶ There are a plethora of specialized agencies, institutions and subsystems involved in the contemporary business of generating gender equality norms. One can argue that this is broadly positive in reinforcing the norm. Nevertheless, the general trajectory is that such norms are emerging from less representative and less democratic forums, which are in turn more vulnerable to powerful states and non-state actors.⁵⁷ Together, these factors can mean the reduced coherence and reduced legitimacy of the resulting gender equality norms.⁵⁸

⁵³ For example, Smart, 'Feminism and Law: Some Problems of Analysis and Strategy' 14 *International Journal of the Sociology of Law* (1986) 109.

⁵⁴ UN Charter, *supra* note 48, Article 11(1).

⁵⁵ Ní Aoláin, 'International Law, Gender Regimes and Fragmentation: 1325 and Beyond' in C. M. Bailliet (ed) *Non-state actors, soft law and protective regimes: from the margins* (2012) at 53-68.

⁵⁶ *Ibid.*

⁵⁷ Boyle and Chinkin, *supra* note 41, at 124-5.

⁵⁸ *Ibid.*

In order to circumvent their obligations, powerful states may deliberately pursue a number of ‘fragmentation strategies’.⁵⁹ The coincidence in 2000 of the adoption of Resolution 1325 by the UN Security Council and the entry into force of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) might be read as a high watermark of feminist influence in international law. Alternatively, it might be read as the dislocation of feminist energies from the treaty-based human rights system, with its established systems of state accountability, monitoring and enforcement. Benvenisti and Downs identify four state ‘fragmentation strategies’ for the avoidance of international obligations:

- 1) avoiding broad, integrative agreements in favor of a large number of narrow agreements that are functionally defined; (2) formulating agreements in the context of onetime or infrequently convened multilateral negotiations; (3) avoiding whenever possible the creation of a bureaucracy or judiciary with significant, independent policymaking authority and circumscribing such authority when its creation is unavoidable; and (4) creating or shifting to an alternative venue when the original one becomes too responsive to the interests of weaker states and their agents.⁶⁰

In light of Benvenisti and Down’s fourth ‘fragmentation strategy’ – the creation of alternative venues when the original one becomes too responsive – it bears reflection that, unlike the human rights treaty monitoring system, the WPS resolutions operate with a considerably more diffuse understanding of accountability, that carries no ‘concrete outcomes, commitments [or] review’.⁶¹

C. Confronting State Literalism

The third limitation – material to some feminist activists, though not universally so – is the fraught question of the formal legal status of the gender equality norm being invoked. Most notably, the textual and legal limitations of Resolution 1325 defined many of the

⁵⁹ Benvenisti and Downs, 'The Empire’s New Clothes: Political Economy and the Fragmentation of International Law' 60 *Stanford Law Review* (2007) 595 at 600.

⁶⁰ *Ibid.*

⁶¹ Ní Aoláin, *supra* note 55, at 137.

daily activities of insider feminists. For example, they were routinely required by member states and UN agencies to cite the precise content of the resolution to justify any requests or recommendations. Further, insider feminists consistently ran up against the gap between the text of the resolution and its actual implementation by UN agencies and member states:

I feel like sometimes we're stretching it a bit when we talk about that because a member state will come back and say "where is that written?" when I talk about bigger picture, structural change... You're sitting with the civil servant who has the resolution and his government's mandate is only what's written in that document.⁶²

Arguments for mainstreaming the resolution within all UN work prompted state responses that the resolutions applied only to countries within the mandate of the Security Council, and not to all conflict-affected and post-conflict member states.⁶³ In other cases, UN member states that were not members of the Security Council claimed that the resolution did not apply to them.⁶⁴ For insider feminists, the question of the resolution's legal status and interpretation was a daily practical concern.

Insider concerns about the systemic implications of the Security Council's adoption of the WPS resolutions principally revolved around the perceived risk of displacement of the WPS agenda from the Security Council to the General Assembly. Their concerns were grounded in its immediate legal implications. For the WPS agenda to have any role in Security Council decision-making on matters such as referrals to the International Criminal Court, country-specific resolutions, donor conferences for conflict-affected countries and peace talks, the Security Council WPS resolutions were recognized to be critical. The example was offered of the 2013 Security Council debate on Mali and the contribution of UN Women's then Director, Michelle Bachelet, to the formal debate: 'Literally, that's the difference: it gets you in the door.'⁶⁵

⁶² Insider #1, Interview with Author, 21 June 2013.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

The formal delineation of roles between the General Assembly and the Security Council is to designate the former as ‘encouraging the progressive development of international law and its codification’⁶⁶ and the latter as rule-enforcing. The distinction is articulated in the UN Charter and largely attributable to the different membership arrangements. The General Assembly includes all UN member states on the basis of sovereign equality and, as such, holds sufficient democratic legitimacy to contribute to norm development. The membership of the Security Council, by contrast, is highly selective and as such is empowered only with a role in enforcing the international law that emerges from elsewhere in the international system. Logically, this distinction would suggest a privileged position for the General Assembly in feminist activism for the progressive articulation of gender rights in international law, and with the ultimate objective of codification. In practice, however, insider activists regarded the General Assembly the site of ‘just talk’, while ‘the Security Council at least has *some kind of binding force* for the resolutions’.⁶⁷

D. CEDAW General Recommendation 30: Bootstrapping Legal Status?

The CEDAW Committee has staged something of a ‘feminist fightback’ in recent years. In 2013, the CEDAW Committee adopted General Recommendation Number 30 on women in conflict prevention, conflict and postconflict situations, responding both to concerns about the legal status and under-enforcement of Resolution 1325 and indeed to the fragmentation of international law norms for gender equality.⁶⁸ The General Recommendation is *inter alia* an effort to give retrospective legal status to Resolution 1325 and its successors. (Notably, the General Recommendation characterizes the

⁶⁶ UN Charter, *supra* note 48, Article 13.

⁶⁷ Insider #2 [emphasis added], Interview with Author, 6 August 2013.

⁶⁸ Committee on the Elimination of All Forms of Discrimination Against Women, ‘General Recommendation No. 30 on Women in Conflict, Prevention, Conflict and Post-Conflict Situations,’ UN Doc. CEDAW/C/GC/30 (2013); C. O’Rourke and A. Swaine, *Guidebook on CEDAW General Recommendation No. 30 and the UN Security Council Resolutions on Women, Peace and Security* (UN Women, 2015).

resolutions as ‘crucial *political* frameworks’.⁶⁹) It interprets implementation of the resolutions as constitutive of state obligations under CEDAW: ‘As all areas of concern addressed in those resolutions find expression in the substantive provisions of the Convention.’⁷⁰

In addition to retrospective legal status, the intervention by the Committee seeks to formally bring the domestic implementation of the resolutions under the monitoring role of the Committee:

States parties are to provide information on the implementation of the Security Council agenda on women, peace and security, in particular resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1960 (2010) and 2106 (2013), including by specifically reporting on compliance with any agreed United Nations benchmarks or indicators developed as part of that agenda.⁷¹

The General Recommendation reflects a longer-term body of work by the Committee to bring domestic implementation of the resolutions under its purview and within the Convention’s formal mechanisms of state accountability. Notably, Northern Ireland was the first jurisdiction in which non-implementation of the Resolution 1325 was raised by the CEDAW Committee. The Committee has maintained attention to the issue over the course of the UK’s last two periodic examinations and has robustly questioned the UK on its failure to implement the resolution in Northern Ireland.⁷² In

⁶⁹ CEDAW, *supra* note 68, at para 25 [emphasis added].

⁷⁰ *Ibid.*, at para 26.

⁷¹ *Ibid.*, at para 83.

⁷² Committee on the Elimination of All Forms of Discrimination Against Women, ‘Summary Record (Partial) of the 1143rd Meeting, Consideration of Reports Submitted by States Parties under Article 18 of the Convention (Continued) *Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland (Continued)*’, UN Doc. CEDAW/C/SR.1143 (2013), paras 14 and 26; Committee on the Elimination of All Forms of Discrimination Against Women, ‘Summary Record (Partial) of the 844th Meeting, Consideration of Reports Submitted by States Parties under Article 18 of the Convention (Continued) *Fifth and Sixth Periodic Reports of the United Kingdom of Great*

both of the most recent sets of Concluding Observations of the CEDAW Committee to the UK, the Committee recommended that Resolution 1325 be implemented in Northern Ireland.⁷³

Insider activity to press for implementation of the resolution in Northern Ireland has not been confined to the CEDAW Committee. The communication procedure of the Commission on the Status of Women⁷⁴ has also reportedly been mobilised by activists from Northern Ireland, though without any public outcome.⁷⁵ Moreover, the UN Special Rapporteur on Violence Against Women raised the specific issue of Resolution 1325 implementation in Northern Ireland in the country report from her 2014 state visit to the UK.⁷⁶ In addition, the UN Women Policy Director addressed the Irish Parliament's Foreign Affairs Committee in 2012 discussing, *inter alia*, implementation and monitoring

Britain and Northern Ireland (Continued)', UN Doc. CEDAW/C/SR.844 (2008) at para 4 and 15.

⁷³ Committee on the Elimination of All Forms of Discrimination Against Women, 'Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland, UN Doc. CEDAW/C/UK/CO/6' (2009) at para 285, calling on the UK to implement Resolution 1325 fully in Northern Ireland; Committee on the Elimination of All Forms of Discrimination Against Women, 'Concluding Observations on the Seventh Periodic Report of the United Kingdom of Great Britain and Northern Ireland, UN Doc. CEDAW/C/GBR/7' (2013) at para 43.

⁷⁴ The communications procedure of the Commission on the Status of Women has its roots in Economic and Social Council resolution 76 (V) of 5 August 1947, as amended by the Council in resolution 304 I (XI) of 14 and 17 July 1950. Further information is available at <http://www.unwomen.org/en/csw/communications-procedure#sthash.MaREzlzM.dpuf> (last accessed September 7, 2016).

⁷⁵ Insider #1, *supra* note 62.

⁷⁶ Special Rapporteur on Violence Against Women, 'Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Rashida Manjoo. Addendum: Mission to the United Kingdom of Great Britain and Northern Ireland', UN Doc. A/HRC/29/27/Add.2 (2015), paras 47 and 107(c)(x).

of the Irish National Action Plan, which includes provision to support the resolution's implementation in Northern Ireland.⁷⁷ The breadth of international institutions pressing for implementation of Resolution 1325 in Northern Ireland poses an interesting counterpoint to concerns about fragmentation. In this case, diverse institutions of international law are pressing for enforcement of the same norm, despite its unclear legal status.

The role of the CEDAW Committee – the paradigmatic feminist insiders of the international system – also illustrates some important differences amongst feminist insiders, depending on their institutional locations. Efforts by the CEDAW Committee to advance the WPS agenda are not, therefore, uncontroversial. Some insiders reported that efforts to strengthen the connections between WPS and CEDAW had generated additional challenges from states that resisted the extra-territorial application of their CEDAW obligations to their foreign policy and international activities.⁷⁸ Alternatively, concerns were expressed that the CEDAW Committee activity on state accountability distracted from important developments within the UN system and regional organizations to influence the foreign policy and international activities of member states.⁷⁹ The mooted fragmentation of the norm also gives rise to the risk of internal competition for resources and political priority.

CEDAW Committee activity has been uniquely effective in prompting local feminist engagement with the legal issues raised by the resolution. The formal admission by a UK civil servant to the CEDAW Committee in 2013, that the UK government did not view the resolution as applicable because no conflict had taken place in Northern Ireland,⁸⁰ did prompt some more technical local engagement with the language of the

⁷⁷ Ms Saraswathi Menon, UN Women Policy Director, Joint Committee on Foreign Affairs and Trade Debate, Dáil Eireann, Wednesday, 24 October 2012, available at <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/commiteetakes/FOJ2012102400009?opendocument> (last accessed on 7 September 2016).

⁷⁸ Insider #2, *supra* note 67; Insider #3, Interview with Author, 28 August 2013.

⁷⁹ Insider #3, *supra* note 78.

⁸⁰ Committee on the Elimination of All Forms of Discrimination Against Women, *supra* note 72, para 26.

resolution and the question of conflict threshold. Local activists appreciated the power of the Committee in eliciting a formal response from the UK government on the application of the resolution to Northern Ireland.⁸¹ The response prompted, in turn, the local umbrella organization for women's groups, the Women's Resource and Development Agency, to commission a study and statement by a local feminist lawyer to the effect that 'nothing within the resolution states that the conflict threshold of the Geneva Conventions must be met before the resolution is engaged'.⁸² Pursuing a different – and more outcome-oriented approach – the Equality Commission of Northern Ireland requested information on the UK's intended activities to increase women's participation in public life in Northern Ireland, in lieu of implementing the resolution in Northern Ireland.⁸³ In this vein, activists considered it a considerable local success when the Democratic Unionist Party acting leader – who continued to contest the legal application of the resolution to Northern Ireland – nevertheless conceded the 'principles that lie behind' the resolution to be worthy of application.⁸⁴ On foot of the 2013 CEDAW state hearings, there also seemed to be a growing awareness amongst local activists of the potentially greater value of CEDAW and the Committee's General Recommendation Number 30 than that of

⁸¹ Irene Miskimmon, Northern Ireland Women's European Platform, Interview with Author, Belfast, 30 July 2013.

⁸² Angela Hegarty, 'Legal Opinion on the Application of Security Council Resolution 1325 to Northern Ireland' (on file with author).

⁸³ Equality Commission for Northern Ireland, 'UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): Submission to the Committee pre-session working group meeting', September 2012, available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/GBR/INT_CEDAW_IFN_GBR_13321_E.pdf (last accessed 7 September 2016), at 4.

⁸⁴ Arlene Foster, Acting First Minister, Oral Answers to Questions, Office of the First Minister and deputy First Minister, 21 September 2015, available at <https://www.theyworkforyou.com/ni/?id=2015-09-21.7.101> (last accessed on 8 September 2016).

Resolution 1325 to their advocacy, due to the UK's ratification of the instrument and its uncontested domestic application.⁸⁵

E. Feminist Pragmatism

A further feminist response to questions about the legal status of the resolution was a good degree of pragmatism. For example, activists at transnational level adopted this pragmatism despite the avowed motivation of WILPF and other transnational actors in targeting the Security Council due its legal authority. Transnational activists responded, for example: 'I tend to highlight what it says and highlight that it's Security Council',⁸⁶ or 'People are quick to say it's not binding because it's not Chapter VII... but PeaceWomen are not worried about legal status: they continue to go ahead and do excellent work'.⁸⁷ In line with local activists, therefore, transnational activists worked hard to ensure that their ongoing daily advocacy for women, peace and security was unconstrained by debates about legal status.

Even feminist activists working at the insider level were acutely aware of the potential for the question of legal status to act as a 'distraction'. One insider respondent gave the example of an official meeting in Cairo to discuss regional implementation of the resolution in North Africa: an hour of the meeting was spent discussing the resolution's legal status, with no agreement reached on the question. The meeting then proceeded with the practical business of designing a regional implementation strategy. Feminist pragmatism appears, therefore, to be a strategy across levels of activism for circumventing – or at least managing – the resolution's shadowy legal status.

⁸⁵ For example, Margaret Ward, Women's Resource and Development Agency, Interview with Author, Belfast, 6 September 2013; Legacy Gender Integration Group, Gender Principles on Dealing with the Legacy of the Past (Belfast, 2015), Principle 10, available at http://www.caj.org.uk/files/2015/09/16/Gender_Principle_Report_Sept_2015_Final_Version1.pdf (last accessed 7 September 2016).

⁸⁶ Lee Webster, WomanKind International, Interview with Author, 18 June 2013.

⁸⁷ Martha Jean Baker, Women's International League for Peace and Freedom, 12 August 2013.

F. Prioritising Local Articulations

A final response to questions about the resolution's legal status was relative lack of concern about the issue, in particular from local and transnational activists. Local feminist activists in Northern Ireland operated with little expectation of strict state compliance, nor even necessarily with an understanding of the resolution as 'law' per se. To illustrate the latter point, there were generally high levels of awareness amongst local activists of articles 2 and 3 of the European Convention on Human Rights (ECHR) and its implications for the UK's approach to conflict-related deaths and injuries. Resolution 1325 was understood, however, to be qualitatively different from state obligations enforced by the European Court of Human Rights and Council of Ministers. As one local activists observed: 'articles 2 and 3 [of the ECHR] are about accountability; while 1325 feels more about needs'.⁸⁸ Some voiced aspirations that the resolution would be recognized as a legal obligation by the UK, for example, in requiring the presence of women in recent high-level talks on dealing with the past,⁸⁹ but this was not viewed as determinative of the resolution's utility to local advocacy.

The resolution's shadowy legal status arguably offered greater space for local feminist interpretation and articulation of the WPS agenda, unconstrained by the formal content of the resolution. Local activists felt that it was important that their activities under the broad heading of the resolution were not limited by the specific textual content of the resolution, much less by its legal status. For example, when asked about the significance of the resolutions' legal implications, one local respondent reported: 'You make texts apply to what you do, don't you, rather than the other way around?'⁹⁰ The questionable legal status of the resolution was, in these circumstances, viewed with little concern. Indeed, a preoccupation with the specific textual and legal content was likely to be unhelpful for local advocacy, in adding an undue level of complexity to understanding and delivering the women's demands.

⁸⁸ Andrée Murphy, *Relatives for Justice*, Interview with Author, Belfast, 24 June 2013.

⁸⁹ Ward, *supra* note 85.

⁹⁰ Murphy, *supra* note 88.

The risk that the ‘complexity’ of the resolution countered its efficacy as an advocacy tool was articulated several times, both in reaching politicians: ‘You don’t get too complicated with the MLAs [Members of the Legislative Assembly].’⁹¹ And in engaging a broad swathe of local women activists in related activism: ‘The language is enough to put you off.’⁹² For example, in explaining the potential value of Security Council Resolution 1325 when designing a truth process, one respondent reported:

But what I’ve also noticed is that it’s quite hard to do. Do you know, because it feels like you have to explain about three different things at once? You know, first of all, here’s a UN resolution, and this is what it’s about, secondly, it does have relevance to us, and thirdly the British and Irish governments aren’t really applying it. And then maybe even fourthly, why they’re not. And then fifthly, why they should. And then sixth, what you could maybe do with it. So it feels like you have to go quite deep in before you can convince people about why it’s interesting, and I think that’s something to do with it being a UN resolution.⁹³

Situating feminist strategy in the specifics of local activism for Resolution 1325 illustrates the relatively niche nature of many concerns about legal status.

Feminist sympathies are typically associated with critical suspicion of elite forms of knowledge and the construction of expertise.⁹⁴ Activist responses are a salutary reminder about ‘the danger of valorizing a politics of expertise that [gives] international lawyers a privileged position within the debate’.⁹⁵ Feminist lawyers in domestic settings

⁹¹ Ward, *supra* note 85.

⁹² Catherine Cooke, Foyle Women’s Information Network, ‘Policy Roundtable’, Power-Sharing Pacts and the Women, Peace and Security Agenda: Constructive Engagements, Queen’s University Belfast, 7 November 2015.

⁹³ Claire Hackett, Falls Community Council and Hanna’s House, Interview with Author, Belfast, 8 August 2013.

⁹⁴ See, for example, Charlesworth, ‘Saddam Hussein: My Part in His Downfall,’ 23 *Wisconsin International Law Journal* (2005) 127.

⁹⁵ Craven et al., ‘We Are Teachers of International Law’ 17 *Leiden Journal of International Law* (2004) 363.

have long articulated the same concerns, namely ‘the trap of thinking that as feminist lawyers we have to be lawyers first and feminists second’.⁹⁶ The proposition that, if the problem is deficient or absent law, the solution is ‘more or “better” law’⁹⁷ conjures a reassuring certainty. Findings here suggest that arguments about legal status risk detracting from the real power of the resolution, namely the space it creates for feminists to respond to the gendered challenges of conflict, as understood and defined by those activists themselves.

4. International Law as Normative: The Articulation of Shared Feminist Values

Feminist ambitions (and reservations) about Resolution 1325 concern not only the resolution’s legal status. The concern of formalists with the legal status of feminist-informed developments in international law reflects the disciplinary commitments of legal scholars. Other disciplinary perspectives, however, also weigh into the debate. For example, scholars of International Relations have attended to international law as a set of ‘standards of behavior defined in terms of rights and obligations,’⁹⁸ more commonly known as norms. Study of the emergence of a ‘global gender equality regime’ identifies the existence of explicit rules of gender equality in international treaties, the practice of state compliance to those rules, and evidence of a shared understanding amongst states of women’s rights as human rights, as conclusive evidence of the existence of a ‘global gender equality regime’.⁹⁹ Tellingly, therefore, this body of scholarship regards the strict legal status of such norms as only one of the potential indicators of the existence of such a norm. Broadly speaking, feminist scholarship in this vein has been more concerned with the gender norms embedded within the resolution and its progeny, than in their strict legal status.

⁹⁶ Lacey, *supra* note 53 at 97.

⁹⁷ C. O’Rourke, *Gender Politics in Transitional Justice* (2013) at 6.

⁹⁸ Kardam, ‘The Emerging Global Gender Equality Regime from Neoliberal and Constructivist Perspectives in International Relations,’ 6 *International Feminist Journal of Politics* (2004) 85 at 87.

⁹⁹ *Ibid.*

A. *Women as Agents*

Characteristic of celebratory discussion of Resolution 1325 is a focus on the resolution's significance as a set of 'values', rather than as law per se. The idea of international law as a 'portmanteau for feminist norms'¹⁰⁰ did not start with Resolution 1325, though the idea has received particular impetus from the Security Council's adoption of the resolution. Indeed, the normative power of Resolution 1325 was emphasized across the different levels of feminist advocacy: the importance of the resolution's endorsement of women's participation in peacebuilding as important and the Security Council's imprimatur in that respect. To the extent that Security Council Resolution 1325 continues to be celebrated for its normative significance, it is for its advancement of women as political agents, and not just passive victims, in conflict situations. Insiders note the significance of the Security Council talking about women as 'a big step forward'¹⁰¹ and the importance of the language of security, rather than development: 'the resolution gives a stronger framework to that, a stronger rationale, a stronger justification'.¹⁰²

For local activists, the resolution offered a 'good focus and framework' and through its focus on women's needs and participation, offered a 'challenge to local patriarchy'.¹⁰³ Also, the resolution was viewed as holding the 'potential to open up the conflict, its nature and people's experiences' because of the value of the international community setting the agenda. The normative value of the resolution principally lay in the potential to shift the local conversation away from a repeated focus on armed actors and the political bargaining of military elites, to a broader understanding of conflict, the harms it causes and the needs it creates:

We live in a very conservative, patriarchal society and trying to maintain a strongly feminist stand in everything that we do and to remain true to that, to me

¹⁰⁰ Charlesworth, 'International Human Rights Law: A Portmanteau for Feminist Norms?', in G. Caglar, E. Prügl and S. Zwingel (eds), *Feminist Strategies in International Governance* (2013) 21.

¹⁰¹ Insider #4, Interview with Author, 13 August 2013.

¹⁰² *Ibid.*

¹⁰³ Miskimmon, *supra* note 81.

there isn't a difficulty in that but when you're trying to work with people on a kind of strategic level who wouldn't share those kinds of views, it can be really helpful to say but out there, on the wider international level, there are important organizations who they maybe don't describe themselves as feminist, as the United Nations wouldn't. But within that, they've got an analysis of why it's important that women have equal representation at all levels and what the impact would have, and how that would improve society. So being able to maybe put it in those terms I think is helpful.¹⁰⁴

International Relations scholarship is typically concerned with the origins of norms; the mechanisms by which they diffuse; and finally, the conditions under which norms will be influential in world politics.¹⁰⁵ Feminists have entered this conversation most concertedly in terms of the first question and the role of women's movements in generating new norms of gender equality and women's (human) rights. Work on transnational advocacy networks (TANs) typically identifies the transnational women's movement that targeted the UN as a key site for establishing norms and mobilized for formal recognition of women's rights as human rights as paradigmatic of non-state actors, social movements, generating new norms.¹⁰⁶ Security Council Resolution 1325 is paradigmatic of this activity is repeatedly claimed as 'owned by the women's movement'.¹⁰⁷

The prominence and perceived success of feminist TANs in this norm generation and diffusion has highlighted the importance of 'soft law' forums in providing a platform for the generation of norms. To illustrate, in terms of norm diffusion, United Nations agencies and conferences have been key in the production of an international consensus on women's human rights. Indeed, as Kardam notes:

¹⁰⁴ Ward, *supra* note 85.

¹⁰⁵ Finnemore and Sikkink, 'International Norms Dynamics and Political Change,' 52 *International Organization* (1998) 887 at 888.

¹⁰⁶ Keck and Sikkink, *supra* note 38, at 165-98.

¹⁰⁷ Cockburn, *supra* note 21; Anderlini, *supra* note 51.

[T]he chronologies of the international women's movement are largely a collection of UN meetings: Mexico, Copenhagen, Nairobi, Vienna, Cairo, Beijing.¹⁰⁸

Feminist approaches to Security Council Resolution 1325 fit well within this paradigm.

Analysis of the emergence of the resolution locates its origins within transnational civil society activism and the significance of the movement from this informal space to the formal institutional level of the UN Security Council in terms of the development and diffusion of the norm.¹⁰⁹ The genealogy of the resolution lies within the three-prong priorities of equality, development and peace inaugurated by the 1975 First World Conference on Women in Mexico. These priorities were subsequently reaffirmed at the later UN World Conferences on Women.¹¹⁰ Kardam's work identifies the importance of norm leader states – states sympathetic to the emerging norm – in galvanizing international institutions to endorse the new norm, and in turn socializing other states into accepting the new norm.¹¹¹ Security Council Resolution 1325 is no exception to these dynamics, as Namibia's centrality to the resolution's adoption is frequently cited.¹¹² This is a powerful example of effective coordination of multi-level feminist activism across local, transnational and insider spaces.

Transnational activists identified the resolution as 'the heart' and 'central to' their work. The WILPF representative described the resolution as 'the pinnacle of WILPF's work... everything we do is in some way related to the resolution'.¹¹³ In particular, the

¹⁰⁸ Kardam, *supra* note 98 at 87.

¹⁰⁹ Tryggestad, *supra* note 51.

¹¹⁰ World Conference of the International Women's Year, Declaration of Mexico on the Equality of Women and their Contribution to Development and Peace, UN Doc. E/CONF.66/34, 2 July 1975; World Conference to review and appraise the achievements of the United Nations Decade for Women: Equality, Development and Peace, Nairobi Forward-Looking Strategies, UN Doc. A/CONF.116/28/Rev, 26 July 1985.

¹¹¹ Kardam, *supra* note 98.

¹¹² Cockburn, *supra* note 21; Anderlini, *supra* note 51.

¹¹³ Martha Jean Baker, *supra* note 87.

emphasis of resolution on women's participation and the causes of conflict, was celebrated in terms of the resolution's normative force. This was also reflected in their repeated 'faith' in the resolution.¹¹⁴ They understood the key benefits of the resolution's application to Northern Ireland as a valuable affirmation of women's organizations and their work in the jurisdiction. They also viewed the key benefit of the inclusion of Northern Ireland in these normative terms, that is, were the UK to recognize the domestic application of the resolution, it would be an enormous boon to the resolution's normative force, as 'an immense example to others'.¹¹⁵

On the whole, there is evidence in the widespread belief in the 'normative transcendence' of international law during times of domestic strife, which is not unique to feminist analysis.¹¹⁶ Yet, this understanding of international law adopts particular resonance where values of women's participation and inclusion are given expression in a manner with little parallel in domestic law.

B. Ownership and Capture

Insider feminists were acutely aware of the resolution's normative significance and the potential for the erosion of the normative gains made. Specifically, they were concerned about the new resolutions unhelpfully disaggregating a gender equality norm for women's participation in peace and security from the specific issues of conflict-related sexual violence. Moreover, they were alert to the dangers of viewing the WPS resolutions as principally normative, in particular in light of the flurry of subsequent WPS resolutions. Repeated concerns were expressed about the development of new resolutions displacing or distracting from the more urgent work of implementation of existing resolutions:

¹¹⁴ Such 'faith' is not unique to feminist activists, see Koller, 'The Faith of the International Criminal Lawyer,' 40 *New York University Journal of International Law and Politics* (2008) 1019.

¹¹⁵ Lee Webster, *supra* note 86.

¹¹⁶ See especially R. Teitel, *Transitional Justice* (2000) at 6.

New resolutions are not bringing anything new to the table: they do not establish what is missing in terms of an accountability mechanism... We should not recycle the same documents for ourselves just to justify our existence.¹¹⁷

The early prominence of feminist civil society in norm-generation raises questions for contemporary feminist engagement. Does the adoption of Resolution 2242 (2015), led by Spain and with little ostensible involvement of feminist civil society, evidence the normative transcendence of the WPS agenda? Is the influence of the norm on state behavior and world politics such that TAN activism is no longer required? Or does the norm itself change as it is internalized by states? Insiders evidenced deep concern over the questionable evolution of ownership over the WPS resolutions. Security Council Resolution 1325 was viewed as the product and outcome of the women's movement, and belonging to transnational feminist momentum since the UN's Fourth World Conference on Women in Beijing.¹¹⁸ Yet, it was acknowledged, these are resolutely not the factors driving the agenda now. Each insider respondent acknowledged the contemporary political momentum around the question of conflict-related sexual violence: 'It's as if every member state has to adopt a WPS resolution when President of the Security Council.'¹¹⁹

Unlike the soft-law developments in women's rights of the 1990s, in which a transnational women's movement had been the key 'norm entrepreneur'¹²⁰ and agent, a small number of states are the exclusive power-holders within the Security Council. Insider feminists were therefore attuned to the way in which key state actors were re-privileged at the Security Council:

So this is the give and take of the system that we have: the opening up and closing down of space, that is, how it's [the resolution] taken on by the system; the

¹¹⁷ Insider #3, *supra* note 78.

¹¹⁸ See further Cockburn, *supra* note 21; Anderlini, *supra* note 51.

¹¹⁹ Insider #3, *supra* note 78.

¹²⁰ See generally Kardam, *supra* note 98; Finnemore and Sikkink, *supra* note 105; Keck and Sikkink *supra* note 38.

technocrats and bureaucrats who decide what to fund get a take on what they understand 1325 to be.

For insiders, it appeared, the political momentum that led to the Resolution and its progeny had released material and political resources for some broadly positive activities by states and technocrats on women, peace and security. At the same time, the reassertion of a state-led international agenda on gender equality systematically narrowed the space for political influence of women's civil society.

C. The 'Dark side' of International Law's Normative Power

Critical feminist legal work reveals the darker side of international law's implicitly normative power, in generating ideal types of womanhood (and masculinity). The critique is writ large in much contemporary feminist scholarship on Security Council Resolution 1325, in particular in work that examines the resolution in the context of its successors (Resolutions 1820, 1888, 1889, 1960, 2122, 2242). Concerns around the essentialization of women as passive victims of sexual violence are much more closely tied to 1325's successor resolutions than to Security Council Resolution 1325 itself. The 'protective stereotypes of women' advanced in the resolutions¹²¹ manifest as part of the larger dynamic identified in critical feminist approaches to international relations, namely 'the dark side of the protection racket'.¹²² Viewed from this perspective, the cost of feminist engagement with international law is the privileging of women's sexual 'purity' that serves to reinforce, rather than challenge, prevailing restrictive ideals of female sexuality.

The preoccupation with the harm and crime of rape is said to obscure the manifold other harms experienced by women in situations of violent conflict, harms that cannot be shoehorned into existing legal categories of international criminal law.¹²³ Most notable amongst such harms are the acute economic harms posed by war, and the

¹²¹ Otto, *supra* note 7.

¹²² Sjoberg and Peet, 'A(Nother) Dark Side of the Protection Racket: Targeting Women in Wars,' 13 *International Feminist Journal of Politics* (2011) 163.

¹²³ Ní Aoláin and Turner, 'Gender, Truth and Transition' 16 *UCLA Women's Law Journal* (2007) 229, 256.

immeasurable harm to familial relationships wrought by the injury or death of a family member.¹²⁴ A further cost sounded in this conceptualization of international law is that the emphasis on women's sexual victimhood reinforces the marginalization of women as political actors in societies transitioning from conflict. This focus on women's sexual victimization in turn denies women's multiple subjectivities in situations of conflict or repression, as survivors, as political activists, and as perpetrators of violence.¹²⁵ Further, this focus is said to obscure men's victimhood and reinforce harmful binaries between women (as passive and peaceful victims) and men (as having a natural proclivity for conflict and violence).¹²⁶

Perhaps because of this commitment to the resolution's normative value, transnational activists were substantially more concerned than local activists by the narrowing of the normative agenda from women's participation and the root causes of conflict, to the focus on conflict-related sexual violence. (The concern simply did not emerge in the local interviews.) Transnational activists felt that this new focus on sexual violence had the potential to be 'a distraction',¹²⁷ or negative because of its focus on women as victims. There was particular concern that the UK's Preventing Sexual Violence Initiative, not just because of its narrow focus but because it was adopted entirely outside of the government's existing National Action Plan on Resolution 1325, could place the resolution 'under threat'.¹²⁸ Activists at the local level will focus on articulating their own interpretation of the WPS resolutions. Possible manipulation at the

¹²⁴ See, for example, Ní Aoláin, 'Sex-Based Violence and the Holocaust - a Reevaluation of Harms and Rights in International Law,' 12 *Yale Journal of Law and Feminism* (2000) 43 at 57-60.

¹²⁵ See, for example, Engle, 'Feminism and Its (Dis)Contents: Criminalizing Wartime Rape in Bosnia and Herzegovina,' 99 *American Journal of International Law* (2005) 778 at 794-804.

¹²⁶ J. Goldstein, *War and Gender* (2001) 251.

¹²⁷ Liz Kean, Amnesty International, Interview with Author, 18 September 2013.

¹²⁸ *Ibid.*

Security Council level does not enter the local calculus of efficacy and strategic planning around Resolution 1325.

In the pendulum swing of WPS resolutions from women's agency to victimhood, the more positive construction of female agency in Security Council Resolutions 2122 (2013) and 2242 (2015) might justly be celebrated. Nevertheless, the larger question of state capture persists and has become more acute with the exclusive role of states in developing the latter resolution. Moreover, the historical connection of the WPS resolutions to transnational women's advocacy means that states can continue to enjoy residual legitimacy through the adoption and support of further resolutions. Slippage in both the ownership and substance of norms being adopted presents a persuasive argument for reconsidering the resolutions as the key line of feminist engagement with the Security Council. Further, it brings considerations of the political significance of the resolutions to the fore.

5. International Law as Politics: Feminists Seeking Leverage

A. Discord in International Law-Making

Gender equality laws and norms in international law are not uniformly endorsed. Those who view international law as pre-eminently a site of international power politics where feminists can potentially 'win', recognize that the openness of these sites is similarly amenable to those who would advance regressive gender norms. The value of international law as a site for the advancement of feminist politics is most developed in terms of the organizational platform that international law provides for feminists active in different jurisdictions,¹²⁹ and also in terms of the political resources it can yield in bringing international scrutiny to recalcitrant states.¹³⁰ Whereas the focus of feminist advocates in development of international law norms of gender equality is on the power of collaborative transnational organizing amongst women, and also the winning of

¹²⁹ Alvarez et al., 'Feminisms in Latin America: From Bogota to San Bernardo,' 17 *Signs* (1992) 393.

¹³⁰ Described as the 'boomerang pattern', Keck and Sikkink, *supra* note 38, at 12-13.

support of key states and international institutions, the understanding of international law as ‘just politics’ identifies international law as principally a site of conflict.¹³¹

Rather than focusing on a single movement or network, and their efforts to advance (generally progressive) norms, Clifford Bob for example focuses instead on ‘the clash’ between advocacy networks and their adversaries, who also form networks.¹³² Rather than assuming that they have little impact and that civil society speaks with one voice against state and corporate destruction, his analysis rests on the premise that advocacy in the international space is characterized by *conflict*. With regard to international law:

To challenge a detested norm’s proclaimed emergence, rivals use submergence strategies. They attack purported soft laws, arguing that proponents highlighted favourable precedents while ignoring inconvenient ones. More belligerently, they invent incompatible norms, using tactics mirroring their foes’; their own conference declarations, quasi-judicial rulings, joint statements, expert opinions, and law review articles.¹³³

For example, scholars have revealed how regressive norm entrepreneurs at the international level have been able to exploit these same fora and entry-points to advance an agenda antithetical to women’s rights and gender equality. Documentation of the ‘unholy alliance’ of the Vatican, Muslim states and some conservative Catholic states provides a potent example, motivated and buttressed by a Christian right transnational social movement organized around ‘globalizing family values’¹³⁴ against women's rights, population policy, and gay and lesbian rights.

B. Power Politics in the UN Security Council

Discord and power politics in international law-making operates somewhat differently in the case of WPS than in gender social issues such as reproductive or sexual rights. The

¹³¹ C. Bob, *The Global Right Wing and the Clash of World Politics* (2012).

¹³² *Ibid.*, at 17.

¹³³ *Ibid.*, at 31.

¹³⁴ D. Buss and D. Herman, *Globalizing Family Values: The Christian Right in International Politics* (2003).

existence of dispersed network of state and non-state actors arguing against the WPS resolutions is difficult to identify. The nature of commitments within the WPS agenda are unlikely to provoke a backlash of this nature. Of course, in this tapestry of international power politics, civil society organizations and alliances are just one, and arguably less important one, of several actors, principal of which is states. The complicity of Security Council Resolution 1325 with militarist state politics has been most forcefully articulated by Dianne Otto, as she draws attention to the place of ‘thematic resolutions’ such as Security Council Resolution 1325 within the broader ‘muscular humanitarianism’ of the Security Council and its need to develop a new *raison d’etre* in the aftermath of the Cold War,¹³⁵ and the consequent danger of 1325 legitimating Security Council militarism. Sheri Gibbings gives a powerful example of this dynamic in the reference to Resolution 1325 in the preamble of Security Council Resolution 1483 (2003) on Iraq:

This can be seen as positive, in that it gives legitimacy to advocates' demand for women's rightful inclusion in the reconstruction and nation-building process in Iraq. But you could also see it in another way: that 1325 is being used as a tool to justify military occupation on behalf of "liberating" women.

There are also fundamental questions about whether, by seeking to assert the binding legal status of Security Council Resolution 1325 and to advocate further WPS resolutions, feminists should be advocating a greater role for the UN Security Council in international law-making. Boyle and Chinkin raise concerns about the Security Council’s development of legislative and quasi-legislative functions, based on accountability, participation, procedural fairness and transparency of decision-making.¹³⁶ They note that the Security Council is not a representative body and, as a result, its legislative action can lack legitimacy and acceptability to non-members.¹³⁷ Procedurally, its negotiations are in private, involving Security Council member states only.¹³⁸ The power that this gives the Security Council, in particular the permanent members, violates the principle of

¹³⁵ Otto, *supra* note 7.

¹³⁶ Boyle and Chinkin, *supra* note 41, at 114-115, 229-232.

¹³⁷ *Ibid.*, at 114.

¹³⁸ *Ibid.*

sovereign equality of states and the principal that states must consent to new obligations under international law.¹³⁹ There is no real scope for challenging or judicially reviewing the Security Council's decisions.¹⁴⁰

Permanent members of the Security Council can veto any resolution that affects its interests or those of its allies, resulting in grave inconsistency in the operation of the Council. These concerns and flaws in Security Council law-making are particularly worrying to states in the global south, whose interests are represented in the Council by only a handful of non-permanent members.

The Security Council is a seriously deficient vehicle for the exercise of legislative competence. Dominated by the permanent members, or sometimes by only one or two of them, unrepresentative and undemocratic, its quasi-legislative powers can only be justified by reference to the paramount urgency and importance of its responsibility for the maintenance of international peace and security... [T]he increasing prominence of the Security Council in the dynamics of international law-making marks an important shift of power and influence away from the General Assembly.¹⁴¹

Expansive feminist analysis, concerned with the political implications of the empowerment of the Security Council vis-à-vis the UNGA, presents arguably more radical and fundamental questions as to whether feminists engaging international law should seek and support these resolutions at all. Such work brings one to a substantively different analysis than that offered by a principal concern with implementation and enforcement of the WPS resolutions. Such concerns did not emerge at all from feminist respondents at any level. Tellingly, insiders understood the political resonance of the resolution principally in terms of the political momentum: 'While you're working in the UN, there's political momentum that you need to address.'¹⁴²

C. Underpinning Feminist Alliances

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.* at 115.

¹⁴² Insider #3, *supra* note 78.

The understanding of international law as the site and outcome of global power politics, and international law as a potential site for the advancement of feminist politics, includes also the effective leveraging of international law by local activists to secure the actual inclusion of women in peacebuilding. Local activists therefore operated with a very different understanding of the power politics engendered by the resolution. For local activists, the key resonance of the resolution was clearly political: firstly, in underpinning new alliances between feminist and more traditional human rights and past-focused NGOs in Northern Ireland; secondly, in unlocking political and material resources to grassroots women's organizations; and thirdly, in providing a foothold to challenge the traditional power politics dominant in dealing with the past, for example in underpinning women's sector demands for the presence of women in talks aimed at securing agreement over loyalist rioting.¹⁴³

The most important demonstrated value of the resolution as a political tool in Northern Ireland appeared to be underpinning improved local cooperation on questions of women and dealing with the past. Local women's organizations, who had traditionally eschewed advocacy on past-focused accountability, due to its potentially divisive nature amongst women,¹⁴⁴ were more proactively engaging the issue under their Resolution 1325 activity.¹⁴⁵ Likewise, certain past-focused NGOs reported increased policy and programmatic activity on gender, due to the integration of the resolution into their work. For example, Relatives for Justice reported how the adoption of the resolution in its own

¹⁴³ See, for example, Conference Report, 'Haass-O'Sullivan Talks: What do Women Think?' 1 March 2014, available at <http://www.wrda.net/Documents/HaassOSullivanWorkshopReport.pdf> (last accessed 8 September 2016).

¹⁴⁴ Rooney, 'Political Division, Practical Alliance: Problems for Women in Conflict,' 6/7 *Journal of Women's History* (1995) 4.

¹⁴⁵ See, for example, the Women and Peace Building Project, supported by the Special European Union Programmes Body. As part of its consultation and outreach activities, the project held a number of specific events on dealing with the past, available at <http://www.wrda.net/Women-and-Peace-Building.aspx> (last accessed 8 September 2016).

work had led to ‘monitoring and evaluation of all family support and legal casework, to identify gender-specific issues and to design responses in the context of 1325’.¹⁴⁶

The political value of the resolution invoked by local respondents was the resolution’s value in circumventing the local legislative Assembly and finding allies in the supra-national arena. According to local respondents, the resolution allowed them to find allies abroad (for example, the CEDAW Committee’s articulation the significance of the resolution to Northern Ireland and the impact of the conflict on women). Their responses also suggested hints of a ‘boomerang pattern’,¹⁴⁷ as they noted the value of being able to reference an international standard and international benchmark in winning round local civil servants to certain policy positions.

In terms of its political value, the resolution was repeatedly invoked by local respondents for its power to unlock resources to feminist and women’s organizations. The objective for all organizations in their engagement with the resolution was that it would be helpful in getting resources (material and political) to local grassroots women, in particular for the issues that they defined as most important in terms of the resolution in Northern Ireland. Indeed, one local respondent not intimately familiar with the text of the resolution, when asked about the significance of the resolution to her work, wondered aloud ‘Did I use it in a funding application?’¹⁴⁸ This priority points again to the very specific understanding of activists at local level of the resolution as a vehicle for empowerment and articulation of a self-defined feminist agenda in conflict and peace-making.

For transnational activists also, the political power of the resolution in underpinning alliances between diverse organizations was underlined. The GAPS initiative is paradigmatic of such an alliance: it includes human rights, development and

¹⁴⁶ Andrée Murphy, *supra* note 88. See also Committee on the Administration of Justice, ‘Submission to the United Nations Committee for the Elimination of All Forms of Discrimination against Women,’ (2013) at 5-7, detailing Resolution 1325 implementation issues.

¹⁴⁷ Keck and Sikkink, *supra* note 38, at 12.

¹⁴⁸ Eleanor Jordan, Windsor Women’s Centre, Interview with Author, 5 August 2013.

peacebuilding perspectives, all in the pursuit of the improved implementation of Security Council Resolution 1325 by the UK government. Their very direct and specific policy focus on UK implementation of the resolution, combined with their unique combination of expertise, had led to GAPS becoming the ‘go-to’ organization of the Foreign and Commonwealth Office on all questions of gender and foreign policy.¹⁴⁹ By contrast, the question of alliances did not appear in feminist insider responses. Rather, insider responses tended to associate the resolution more with conflict and international competition for resources within the international system.

To the extent that feminism is politics, one could argue that all feminist engagements with international law are inherently political. Nevertheless, the findings in this section point to specific opportunities and risks, such as geo-politics and political alliances, that are usefully conceptualized as distinct from engagements that draw on international law’s doctrinal or normative dimensions.

6. Conclusion

The enduring appeal of international law is evidenced by the depth, breadth and persistence of feminist engagement. There is little to suggest that, either historically or in contemporary times, this activism has proceeded without reservation. In one sense, feminist ambivalence about international law as either inadequate to the task of securing gender equality or, more nefariously, as actively complicit in the maintenance of gender inequality, resonates compellingly with longer-term feminist concerns about engagement with domestic law. In another sense, however, it does appear that international law offers unique sites of opportunity and risk to those who seek to utilize it in the advancement of feminist objectives.

Through a review of related scholarship and advocacy, the risks identified principally concerned the weak nature of gender equality norms emerging in

¹⁴⁹ Chris Levick, Gender Action for Peace and Security, Interview with Author, 1 August 2013. Moreover, GAPS acts as the Secretariat to the Westminster All-Party Parliamentary Group on Women, Peace and Security, details available at <http://www.publications.parliament.uk/pa/cm/cmallparty/register/women-peace-and-security.htm> (last accessed 8 September 2016).

contemporary international law; the vulnerability of these norms to capture by militaristic state interests; and the dangers of privileging the Security Council as an organ of international law-making. The opportunities, conversely, emerge from international law's supra-national monitoring and enforcement bodies over state behaviour; the relative openness of international law-making to articulating certain feminist values, in ways that arguably have scant domestic parallel; and the potential of international law to underpin local alliances across organizations and issues.

Broadly speaking, the article found that it was insider feminists who shared concerns about the resolution's legal deficiencies and the broader place of the Security Council within international lawmaking that is prominent in the academic literature. These concerns were, however, largely remote for local feminist activists, who recognized in the resolution important political resources to support their mobilization, their alliances with others and, it was hoped, ultimately their engagement with certain state actors. The article concludes that critical reflection on feminist strategy in international law is usefully informed by more deliberate consideration of its legal, political and normative dimensions, as well as an awareness that these dimensions will be differently weighted by differently situated feminist actors. By elucidating the different rationales for feminist engagement, and also in cautioning differently-situated feminist actors as to the potential costs elsewhere of their advocacy, such analysis may ultimately inform more constructive engagement across these differences.